

Appeal from a decision by Administrative Law Judge Robert W. Mesch (COLORADO 20681 through 20700) denying permission to conduct placer mining operations on those portions of a group of claims located on land withdrawn for a power site.

Affirmed.

1. Mining Claims: Power Site Lands--Mining Claims: Surface
Uses--Mining Claims Rights Restoration Act

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a power site classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

2. Mining Claims: Power Site Land--Mining Claims: Surface
Uses--Mining Claims Rights Restoration Act

The Mining Claims Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

APPEARANCES: Melvin D. Rueckhaus, Esq., Albuquerque, New Mexico, for Appellants. Harold J. Baer, Jr., Esq., Office of the Solicitor, Denver, Colorado, for Appellee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is an appeal from a decision by Administrative Law Judge Robert W. Mesch, dated January 12, 1976, denying permission to conduct placer mining operations on a group of 18 placer mining claims 1/ located within Power Site Classification No. 110, approved June 24, 1925. The claims are along the San Miguel River in San Miguel County, Colorado, and cover land along the river for about 4 miles. There are no roads in the area of the claims, and the only access to the claims and the river is by foot. The area of the river covered by the claims is managed by the Bureau of Land Management for roadless-type recreational uses.

The claims were located pursuant to the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-25 (1970), which provides for location of mining claims on lands withdrawn for power development or power sites. 2/ The Act requires any person who locates a mining claim on such lands after August 11, 1955, to file a copy of the notice of location in the district land office within 60 days of location. 30 U.S.C. § 623 (1970). A person who files a placer mining claim may not conduct mining operations on the claim within 60 days after filing in the land office, in order to give the Secretary opportunity to decide

1/ The Lancer Boy, High Heels, Mini Mine, Wheel of Fortune, Big Dream, Colonel Mac, Boyd's Bonanza, Jade Necklace, American Victory, Valient, Pony Soldier, Tiger Eye, Moon Gold, Esperanza, Vast-Vision, Jean Ann, Ponderosa, and part of the Army Brass placer mining claims. Proceedings were dismissed with respect to part of the Army Brass and all of the Sun Gold and Success claims because they were not within the withdrawn lands.

2/ The Act excepts from location:

"[A]ny lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once." 30 U.S.C. § 621(a) (1970).

Neither of these exceptions is applicable to any of the lands involved in this case.

whether a hearing should be held on the question of " * * * whether placer mining operations would substantially interfere with other uses of the land included within the placer claim * * * ." 30 U.S.C. § 621(b) (1970). If the Secretary decides to hold a hearing, mining operations on the claim must be suspended until the hearing has been held and an appropriate order issued which " * * * shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to these operations; or (3) a general permission to engage in placer mining * * * ." 30 U.S.C. § 621(b) (1970).

A public hearing to determine whether placer mining operations would substantially interfere with other uses of the power [**5] site land within the claims was held in Telluride, Colorado, on July 15, 1975. In his decision, Judge Mesch noted that witnesses made a prima facie case that unrestricted placer mining operations would have a significant adverse impact upon the terrain, the vegetation, fish and wildlife. He further noted that the claimant did not present any evidence which would support a contrary conclusion. He found that the evidence adduced at the hearing demonstrated that unrestricted placer mining operations on the power site land within the claims, specifically in the gravel beds in and along the river, would substantially interfere with the use of the land for recreational purposes. In addition, he found that there was no evidence that if unrestricted placer mining were allowed in the gravel beds, the surface of the land could be restored to its original condition without substantially interfering with the other uses of the land. Finally, Judge Mesch found that he had no authority to permit restricted or limited mining operations on the claims.

[1] Appellants first argue that Judge Mesch erred in considering the use of the land for recreational purposes despite the fact that [**6] it was withdrawn for power site purposes. They base this argument on the fact that the lands were withdrawn for power site purposes, and that, therefore, the real issue is whether placer mining will substantially interfere with the use of the land for power site development.

The phrase "other uses of the land included within the placer claim" in section 621(b) is not restricted power site uses, as appellants argue. Although the Mining Claims Rights Restoration Act applies by its terms to land within power site withdrawals, all uses of the land are to be considered in determining whether placer

mining operations will substantially interfere with the use of the land. United States v. Paul F. and Adeline A. Cohen, 70 I.D. 178, 179 (1963). In fact, the decisions considering whether to prohibit placer claims on power site classifications have been concerned with uses other than power development. United States v. Western Minerals & Petroleum, Inc., 12 IBLA 328 (1973); (use of the land for watershed); United States v. Paul F. Bennewitz, 72 I.D. 183 (1965) (use of the land for recreational purposes); United States v. Paul F. and Adeline A. Cohan, *supra*, (use of the land for recreational and homesite purposes). On the basis of the language of section 621(b) and the departmental decisions which interpret it, it must be concluded that the "other uses" to which that section refers are not restricted to power development or power sites. Therefore, placer mining which would substantially interfere with recreational use of the withdrawn land is properly prohibited.

On the basis of the record, we agree with Judge finding that unrestricted placer mining would interfere substantially with the use of the land for other purposes.

[2] Appellants next argue that Judge Mesch failed to consider the possibility of allowing only limited mining activities, thereby preserving the land for recreational use. However, the Act only allows for orders permitting or prohibiting unrestricted placer mining. If unrestricted placer mining is allowed, it can only be conditioned by an order requiring restoration of the surface. 30 U.S.C. § 621(b) (1970).

The reason for this "all or nothing" approach with respect to placer mining on power site lands was explained in United States v. Paul F. Bennewitz, *supra*:

The statute permits the Secretary to act only once. He cannot issue an order now allowing unrestricted mining on the basis of a one or two dredge operation and then, if additional dredges are added or larger ones are substituted or a totally different type of operation is adopted, issue an order prohibiting mining. He can act only once, either to permit or prohibit. Because his course of action is so limited, to avoid defeating the purpose of the act, he should be able to base his decision not only on what the claimant proposes to do but also on what the claimant or his successor may be able to do in the way of placer mining. 72 I.D. at 183.

Thus, even if the locator only intends to conduct limited placer mining operations on the claim, and even if there is no indication that such operations will expand into large-scale activity, the Act only allows the Secretary to consider the effects of unlimited placer mining on other uses of the land within the claims.

Finally, appellants asserts that Judge Mesch did not consider the alternative of allowing mining followed by restoration of the land. However, in his decision, Judge Mesch noted that "there is no evidence to support the conclusions that if unrestricted placer mining is allowed in the gravel beds, the surface of the land can be restored to its original condition and the restoration would not prevent substantial interference with other uses of the land." We agree with and adopt this finding.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

